

63. Hawk actively induced (and continues to induce) and contributed (and continues to contribute) to the infringement of the '779 Patent in violation of 35 U.S.C. §§ 271(b) and (c) to secure payments on sales to its customers.

64. This is an exceptional case, entitling the Plaintiff to the recovery of reasonable attorneys' fees and costs in pursuing this matter to judgment.

SEVENTH COUNT – INFRINGEMENT OF '826 PATENT

65. Paragraphs 1 through 31 are hereby incorporated by reference as if fully set forth herein.

66. By its import, marketing, offering for sale and sale of its item No. MG9025, Hawk has infringed and continues to infringe the '826 Patent in violation of 35 U.S.C. § 271(a).

67. Hawk's infringement was and is willful, purposeful and/or deliberate, and has caused substantial harm to Carson.

68. Carson has suffered damages in the form of, *inter alia*, a diversion of trade and lost profits.

69. Carson has been and will continue to suffer irreparable harm, unless Hawk is enjoined by this Court.

70. This is an exceptional case, entitling the plaintiffs to the recovery of reasonable attorneys' fees and costs in pursuing this matter to judgment.

EIGHTH COUNT – INFRINGEMENT OF '826 PATENT

71. Paragraphs 1 through 31 are hereby incorporated by reference as if fully set forth herein.

72. Hawk's infringing activity was willful, purposeful and/or deliberate, and has caused substantial harm to Carson.

73. Carson has suffered damages in the form of, *inter alia*, a diversion of trade and lost profits.

74. Hawk actively induced (and continues to induce) and contributed (and continues to contribute) to the infringement of the '826 Patent in violation of 35 U.S.C. §§ 271(b) and (c) to secure payments on sales to its customers.

75. This is an exceptional case, entitling the Plaintiff to the recovery of reasonable attorneys' fees and costs in pursuing this matter to judgment.

NINTH COUNT – INFRINGEMENT OF '437 PATENT

76. Paragraphs 1 through 31 are hereby incorporated by reference as if fully set forth herein.

77. By its import, marketing, offering for sale and sale of its item No. MG7639, Hawk has infringed and continues to infringe the '437 Patent in violation of 35 U.S.C. § 271(a).

78. Hawk's infringement was and is willful, purposeful and/or deliberate, and has caused substantial harm to Carson.

79. Carson has been and will continue to suffer irreparable harm, unless Hawk is enjoined by this Court.

80. This is an exceptional case, entitling the Plaintiff to the recovery of reasonable attorneys' fees and costs in perusing this matter to judgment.

TENTH COUNT – INFRINGEMENT OF ‘437 PATENT

81. Paragraphs 1 through 31 are hereby incorporated by reference as if fully set forth herein.

82. Hawk’s infringing activity was willful, purposeful and/or deliberate, and has caused substantial harm to Carson.

83. Hawk actively induced (and continues to induce) and contributed (and continues to contribute) to the infringement of the ‘437 Patent in violation of 35 U.S.C. §§ 271(b) and (c) to secure payments on sales to its customers.

84. This is an exceptional case, entitling the Plaintiff to the recovery of reasonable attorneys’ fees and costs in pursuing this matter to judgment.

ELEVENTH COUNT – UNFAIR COMPETITION

85. Paragraphs 1 through 31 are hereby incorporated by reference as if fully set forth herein.

86. Hawk’s acts and conduct, alone and/or in combination, constitute unfair competition under the Lanham Act of 1946, as amended 15 U.S.C. § 1125(a).

87. Hawk has engaged in acts and/or conduct, alone or in combination, constituting unfair competition by, among other things:

a. Copying and reproducing Carson’s products, including Carson’s MAGNIVISOR DELUXE™;

b. Systematically infringing Carson’s intellectual property rights, including the ‘729 Patent, ‘601 Patent, ‘779 Patent, ‘826 Patent, and ‘437 Patent, and thereby unfairly competing with Carson; and

88. Hawk's acts of unfair competition, as detailed above, have damaged and will continue to damage and cause irreparable harm to the business and goodwill of Carson unless restrained by this Court.

89. Hawk's acts have caused harm and loss to Carson, entitling it to the recovery of damages.

PRAYER FOR RELIEF

WHEREFORE, Carson prays for the following.

1. An Order enjoining Hawk from importing, marketing, distributing, offering for sale and selling any products that infringe the '729 Patent.
2. An Order enjoining Hawk from inducing or contributing to the infringement of the '729 Patent.
3. An Order enjoining Hawk from importing, marketing, distributing, offering for sale and selling any products that infringe the '601 Patent.
4. An Order enjoining Hawk from inducing or contributing to the infringement of the '601 Patent.
5. An Order enjoining Hawk from importing, marketing, distributing, offering for sale and selling any products that infringe the '779 Patent.
6. An Order enjoining Hawk from inducing or contributing to the infringement of the '779 Patent.
7. An Order enjoining Hawk from importing, marketing, distributing, offering for sale and selling any products that infringe the '826 Patent.

8. An Order enjoining Hawk from inducing or contributing to the infringement of the '826 Patent.
9. An Order enjoining Hawk from importing, marketing, distributing, offering for sale and selling any products that infringe the '437 Patent.
10. An Order enjoining Hawk from inducing or contributing to the infringement of the '437 Patent.
11. An Order impounding and/or destroying all infringing products.
12. An award of money damages pursuant to 35 U.S.C. § 284, 35 U.S.C. § 289, and 15 U.S.C. § 1117.
13. Multiple damages pursuant to 35 U.S.C. § 284 and 15 U.S.C. § 1117.
14. An award of attorneys' fees and costs pursuant to 35 U.S.C. § 284 and 15 U.S.C. § 1117.
15. Prejudgment Interest.
16. Punitive damages.
17. Costs.
18. Such other relief as this Court deems just and proper.

JURY DEMAND

Carson hereby requests a trial by jury of any issue so triable as of right pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: New York, New York
March 8, 2012

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By: 

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U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

Attorneys for Plaintiff
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV 12-1169

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CARSON OPTICAL, INC.	:	Civil Action No.
	:	
Plaintiff,	:	<u>COMPLAINT</u>
	:	
V.	:	JURY TRIAL DEMANDED
	:	
HAWK IMPORTERS, INC.	:	
SHYAM BAHETI and RAM BAHETI	:	
	:	
Defendants,	:	SPATT, J.
-----X		BOYLE M.J.

COMPLAINT

The plaintiff, Carson Optical, Inc., hereby files its complaint against the defendants, Hawk Importers, Inc., Shyam Baheti and Ram Baheti, as follows:

PARTIES

1. The plaintiff, Carson Optical, Inc. ("Carson") is, and at all relevant times has been, a corporation organized and existing under the laws of the State of New York, and maintains its principal place of business in Hauppauge, New York.
2. Carson markets and sells optical products throughout the country including within this Judicial District.

3. Upon information and belief, Hawk Importers, Inc. ("Hawk") is an Illinois corporation with its principal place of business at 2307 East Artesia Boulevard, Long Beach, California 90805. Upon information and belief, Hawk is engaged in, among other business activities, importing, selling, and distributing optical devices, including magnifiers.

4. Upon information and belief, Shyam Baheti is a California resident operating a business at 2307 East Artesia Boulevard, Long Beach, California 90805. Upon information and belief, Ram Baheti is a California resident operating a business at 2307 East Artesia Boulevard, Long Beach, California 90805. Upon information and belief, Shyam Baheti and Ram Baheti, acting as corporate officers and/or owners of Hawk, or otherwise having control over Hawk, are the masterminds behind the infringing activities described herein, and are responsible for directing the manufacture, distribution, offer for sale and sale of the infringing goods. Hawk, Shyam Baheti and Ram Baheti shall hereinafter be collectively referred to as "Hawk".

JURISDICTION AND VENUE

5. This is an action for, *inter alia*, violation of the Patent Laws of the United States of America, 35 U.S.C. § 271, et al. and for unfair competition in violation of the Lanham Act of 1946, as amended 15 U.S.C. § 1125(a).

6. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 1338(b), and 1367(a) and 15 U.S.C. § 1121. Venue is proper within this judicial district pursuant to 28 U.S.C. §§1391(b), 1291(c), and 1400(b).

THE PLAINTIFFS' INTELLECTUAL PROPERTY RIGHTS

7. On September 12, 2000, the United States Patent and Trademark Office issued U.S. Patent No. 6,116,729 ("The '729 Patent"). A copy of the '729 Patent is attached hereto as Exhibit A.

8. Since September 27, 2011, Carson has been the assignee of the '729 Patent.

9. The exclusive right to market and sell products claimed by the '729 Patent is a valuable business asset of Carson.

10. Carson's commercial embodiment of the '729 Patent is a product that bears the trademark MAGNIVISOR DELUXE. An exemplar of the MAGNIVISOR DELUXE is attached hereto as Exhibit B.

11. On April 10, 2001, the United States Patent and Trademark Office issued U.S. Patent No. 6,215,601 B1 ("The '601 Patent"). A copy of the '601 Patent is attached hereto as Exhibit C.

12. Since September 27, 2011, Carson has been the assignee of the '601 Patent.

13. The exclusive right to market and sell products claimed by the '601 Patent is a valuable business asset of Carson.

14. Carson's commercial embodiment of the '601 Patent is a product that bears the trademark MAGNIVISOR DELUXE. An exemplar of the MAGNIVISOR DELUXE is attached hereto as Exhibit B.

15. On December 16, 2003, the United States Patent and Trademark Office issued U.S. Patent No. D483,779 S ("The '779 Patent"). A Copy of the '779 Patent is attached hereto as Exhibit D.

16. Since September 27, 2011, Carson has been the assignee of the '779 Patent.

17. The exclusive right to market and sell products claimed by the '779 Patent is a valuable business asset of Carson.

18. Carson's commercial embodiment of the '779 Patent is a product that bears the trademark MAGNIVISOR DELUXE. An exemplar of the MAGNIVISOR DELUXE is attached hereto as Exhibit B.

19. On October 16, 2007, the United States Patent and Trademark Office issued U.S. Patent No. 7,281,826 B2 ("The '826 Patent"). A Copy of the '826 Patent is attached hereto as Exhibit E.

20. Since September 27, 2011, Carson has been the assignee of the '826 Patent.

21. The exclusive right to market and sell products claimed by the '826 Patent is a valuable business asset of Carson.

22. Carson's commercial embodiment of the '826 Patent is a product that bears the trademark MAGNIVISOR DELUXE. An exemplar of the MAGNIVISOR DELUXE is attached hereto as Exhibit B.

23. On April 6, 2010, the United States Patent and Trademark Office issued U.S. Patent No. D613,437 S ("The '437 Patent"). A Copy of the '437 Patent is attached hereto as Exhibit F.

24. Since August 1, 2011, Carson has been the assignee of the '437 Patent.

25. The exclusive right to market and sell products claimed by the '437 Patent is a valuable business asset of Carson.

26. Hawk's infringing embodiment of the '437 Patent is a product that bears Hawk item No. of MG7639. An exemplar of the MG7639 is attached hereto as Exhibit G.

THE INFRINGING AND DECEPTIVE ACTS OF THE DEFENDANT

27. Hawk has imported, offered for sale, and sold a product that infringes the '729 Patent. An exemplar of this infringing product is attached as Exhibit H.

28. Hawk has also imported offered for sale, and sold a product that infringes the '601 Patent. An exemplar of this infringing product is attached as Exhibit H.

29. Hawk has also imported offered for sale, and sold a product that infringes the '779 Patent. An exemplar of this infringing product is attached as Exhibit H.

30. Hawk has also imported offered for sale, and sold a product that infringes the '826 Patent. An exemplar of this infringing product is attached as Exhibit H.

31. Hawk has also imported offered for sale, and sold a product that infringes the '437 Patent. An exemplar of this infringing product is attached as Exhibit I.

FIRST COUNT – INFRINGEMENT OF '729 PATENT

32. Paragraphs 1 through 31 are hereby incorporated by reference as if fully set forth herein.

33. By its import, marketing, offering for sale and sale of its item No. MG9025, Hawk has infringed and continues to infringe the '729 Patent in violation of 35 U.S.C. § 271(a).

34. Hawk's infringement was and is willful, purposeful and/or deliberate, and has caused substantial harm to Carson.

35. Carson has suffered damages in the form of, *inter alia*, a diversion of trade and lost profits.

36. Carson has been and will continue to suffer irreparable harm, unless Hawk is enjoined by this Court.

37. This is an exceptional case, entitling the Plaintiff to the recovery of reasonable attorneys' fees and costs in perusing this matter to judgment.

SECOND COUNT – INFRINGEMENT OF '729 PATENT

38. Paragraphs 1 through 31 are hereby incorporated by reference as if fully set forth herein.

39. Hawk's infringing activity was willful, purposeful and/or deliberate, and has caused substantial harm to Carson.

40. Carson has suffered damages in the form of, *inter alia*, a diversion of trade and lost profits.

41. Hawk actively induced (and continues to induce) and contributed (and continues to contribute) to the infringement of the '729 Patent in violation of 35 U.S.C. §§ 271(b) and (c) to secure payments on sales to its customers.

42. This is an exceptional case, entitling the Plaintiff to the recovery of reasonable attorneys' fees and costs in pursuing this matter to judgment.

THIRD COUNT – INFRINGEMENT OF '601 PATENT

43. Paragraphs 1 through 31 are hereby incorporated by reference as if fully set forth herein.

44. By its import, marketing, offering for sale and sale of its item No. MG9025, Hawk has infringed and continues to infringe the '601 Patent in violation of 35 U.S.C. § 271(a).

45. Hawk's infringement was and is willful, purposeful and/or deliberate, and has caused substantial harm to Carson.

46. Carson has suffered damages in the form of, *inter alia*, a diversion of trade and lost profits.

47. Carson has been and will continue to suffer irreparable harm, unless Hawk is enjoined by this Court.

48. This is an exceptional case, entitling the Plaintiff to the recovery of reasonable attorneys' fees and costs in perusing this matter to judgment.

FOURTH COUNT – INFRINGEMENT OF '601 PATENT

49. Paragraphs 1 through 31 are hereby incorporated by reference as if fully set forth herein.

50. Hawk's infringing activity was willful, purposeful and/or deliberate, and has caused substantial harm to Carson.

51. Carson has suffered damages in the form of, *inter alia*, a diversion of trade and lost profits.

52. Hawk actively induced (and continues to induce) and contributed (and continues to contribute) to the infringement of the '601 Patent in violation of 35 U.S.C. §§ 271(b) and (c) to secure payments on sales to its customers.

53. This is an exceptional case, entitling the Plaintiff to the recovery of reasonable attorneys' fees and costs in pursuing this matter to judgment.

FIFTH COUNT – INFRINGEMENT OF ‘779 PATENT

54. Paragraphs 1 through 31 are hereby incorporated by reference as if fully set forth herein.

55. By its import, marketing, offering for sale and sale of its item No. MG9025, Hawk has infringed and continues to infringe the ‘779 Patent in violation of 35 U.S.C. § 271(a).

56. Hawk’s infringement was and is willful, purposeful and/or deliberate, and has caused substantial harm to Carson.

57. Carson has suffered damages in the form of, *inter alia*, a diversion of trade and lost profits.

58. Carson has been and will continue to suffer irreparable harm, unless Hawk is enjoined by this Court.

59. This is an exceptional case, entitling the plaintiffs to the recovery of reasonable attorneys’ fees and costs in perusing this matter to judgment.

SIXTH COUNT – INFRINGEMENT OF ‘779 PATENT

60. Paragraphs 1 through 31 are hereby incorporated by reference as if fully set forth herein.

61. Hawk’s infringing activity was willful, purposeful and/or deliberate, and has caused substantial harm to Carson.

62. Carson has suffered damages in the form of, *inter alia*, a diversion of trade and lost profits.